

In the Matter of LICENSE No. 573308 and MERCHANT MARINER'S DOCUMENT No. 206-20-7289
Issued to: John W. Jeffries

DECISION OF THE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2427

John W. JEFFRIES

This appeal has been taken in accordance with 46 U.S.C. 7702 and 46 CFR 5.30-1.

By order dated 29 August 1985, an Administrative Law Judge of the United States Coast Guard at New York, New York, revoked Appellant's license and merchant mariner's document upon finding proved the charges of misconduct and incompetence. The misconduct charge was supported by two specifications. The first alleged that, under the authority of the captioned documents aboard the SS EDGARM. QUEENY, on or about 1 June 1985, Appellant had in his possession alcoholic beverages, to wit, beer and rum. The second misconduct specification alleged that, at the same place and time, Appellant wrongfully rendered himself unfit to stand his scheduled watch due to intoxication. The incompetence charge was supported by a single specification alleging that, while serving as Third Assistant Engineer aboard the SS EDGAR M. QUEENY under the authority of the captioned documents, on or about 1 June 1985, Appellant was and presently is incompetent to perform duties as third engineer due to alcoholism.

The hearing was held at Philadelphia, Pennsylvania, on 23 July and 15 August 1985.

Appellant appeared at the hearing without counsel and entered a plea of guilty to the first misconduct specification, and pleas of not guilty to the second misconduct specification and the incompetence charge and specification.

The Investigating Officer introduced in evidence two exhibits and the testimony of two witnesses.

In defense, Appellant submitted no evidence.

After the hearing the Administrative Law Judge rendered a decision in which he concluded that the charges and specifications had been proved, and entered a written order revoking all licenses and/or documents issued to Appellant.

The complete Decision and Order was served on 5 September 1985. Appeal was timely filed on 26 September 1985, and perfected on 10 October 1985.

FINDINGS OF FACTS

On 1 June 1985, Appellant was serving as Third Assistant Engineer aboard the SS EDGAR M. QUEENY, which was in an anchorage near Stapleton, New York. Appellant had been assigned the 12 to 4 watch. At 2200, the vessel was ordered to leave the anchorage and proceed to the Powell Deffren Dock in Bayonne, New Jersey. Upon receiving the order, the Chief Engineer went to Appellant's quarters to advise Appellant that he was to assist in moving the vessel. When he entered the compartment, the Chief Engineer observed Appellant lying in his bunk, a broken drinking glass on the deck, and an empty rum bottle together with five or six empty beer cans scattered about.

The Chief Engineer awakened Appellant, noting that Appellant's breath smelled of beer and that his speech was slurred. When Appellant walked to his desk, the Chief Engineer noted that Appellant was unsteady on his feet. The Chief Engineer determined that Appellant was in no condition to stand his watch at midnight.

At the initial session of the hearing, the Investigating Officer filed a written motion seeking an order directing Appellant to submit to a medical examination to determine his competence to serve aboard U.S. merchant vessels. In response to this motion, Appellant voluntarily agreed to go to the U.S. Naval Hospital, Philadelphia, Pennsylvania, for a chronic alcoholism examination.

Appellant was examined on 7 August 1985 by the Chief of Psychiatry at the U.S. Naval Hospital, who subsequently testified that she had diagnosed Appellant to be a chronic alcoholic with alcohol dependency. Her evaluation of Appellant's fitness for duty was that he was not fit for duty as a merchant seaman and that, in order to be considered fit for duty, Appellant must remain symptom-free, without medication, for one year.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. Appellant contends that he had an agreement with another third assistant engineer to stand by for him, and that the sanction is inappropriate.

Appearance: Appellant, pro se.

OPINION

I

Appellant argues that the third assistant engineer who had the 8-12 watch was "standing by" for him. There is no competent evidence to support this argument.

At the hearing the Chief Engineer, in response to cross examination by Appellant, denied knowledge of such an arrangement. Appellant did not testify.

The Administrative Law Judge, as the trier of fact, is to evaluate the evidence and testimony presented at the hearing, and he has discretion to find ultimate facts pertaining to each specification. Appeal Decisions 2282 (LITTLEFIELD) and 2395 (LAMBERT). There has been no showing that the Administrative Law Judge's findings of fact were either arbitrary and capricious, or clearly erroneous, and they will not be disturbed on appeal.

II

Appellant also contends that the Administrative Law Judge did not consider the psychiatrist's "recommendation" (that he must remain symptom-free for one year before he could be considered fit for sea duty) in ordering the sanction of revocation. I am not persuaded by this argument.

The record reveals that the Administrative Law Judge considered all relevant evidence in formulating an appropriate order. Appellant's prior record shows ten previous offenses, six of which specifically involve intoxication or intoxicating beverages.

Title 46 USC 7703 provides that a license or merchant mariner's document may be suspended or revoked for an "act of incompetence. . . ." In this case, it is evident that Appellant committed an "act of incompetence" by rendering himself unfit to stand his watch as scheduled. This, coupled with expert opinion testimony concerning his lack of fitness and his prior record would support an order of revocation.

The sanction imposed at the conclusion of a case is exclusively within the authority and discretion of the Administrative Law Judge. Appeal Decision 2362 (ARNOLD). An extensive record of intoxication while sailing as an engineering officer makes an individual a definite threat to the safety of life and property at sea. The duties of engineering officers are too important to expose others to the risk of such conduct, and an order of revocation is appropriate. See Appeal Decision 1386 (CUTTS). See also Appeal Decision 2406 (ZOFCHAK) (Revocation proper where Appellant's actions, resulting from abuse of alcohol, endangered lives of passengers.)

CONCLUSION

Having reviewed the entire record and considered Appellant's arguments, I find that Appellant has not established sufficient cause to disturb the findings and conclusions of the Administrative Law Judge.

The hearing was conducted in accordance with the requirements of applicable regulations.

ORDER

The decision of the Administrative Law Judge dated at New York, New York, on 29 August 1985 is AFFIRMED.

J. C. IRWIN
Vice Admiral, United States Coast Guard
ACTING COMMANDANT

Signed at Washington, D.C. this 21 day of July, 1986.